

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM, INC., a Delaware corporation; AMAZON.COM SERVICES, LLC, a Delaware limited liability company; and PN MEDICAL, INC., a Florida corporation.

Plaintiffs,

V.

Individuals and entities doing business as the following Amazon Selling Accounts: BAMB AWNS; ERDEZ LLC; LOUETTA CIFALDI LLC; OTARY SERVI; PHILP ALLAR; ROYSTAL INC.; SIXTH6HOME; TRBO STMENT; and DOES 1-10.

Defendants.

No.

COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

1. INTRODUCTION

1. This case involves Defendants' unlawful and expressly prohibited sale of counterfeit PN Medical, Inc. ("PN Medical") respiratory muscle training products in the Amazon.com store (the "Amazon Store"). Amazon.com, Inc. and Amazon.com Services, LLC (collectively "Amazon") and PN Medical (collectively, "Plaintiffs") jointly bring this lawsuit to permanently prevent and enjoin Defendants from causing future harm to Amazon's and PN Medical's customers, reputations, and intellectual property ("IP"), and to hold Defendants accountable for their illegal actions.

1 2. Amazon owns and operates the Amazon Store and equivalent counterpart
2 international stores and websites. Amazon's stores offer products and services to customers in
3 more than 100 countries around the globe. Some of the products are sold directly by Amazon,
4 while others are sold by Amazon's numerous third-party selling partners. The Amazon brand
5 is one of the most well-recognized, valuable, and trusted brands in the world. To protect its
6 customers and safeguard its reputation for trustworthiness, Amazon invests heavily in both time
7 and resources to prevent counterfeit goods from being sold in its stores. In 2020 alone,
8 Amazon invested over \$700 million and employed more than 10,000 people to protect its stores
9 from fraud and abuse. Amazon stopped over six million suspected bad actor selling accounts
10 before they published a single listing for sale.

11 3. Since its founding in 1980, PN Medical has enabled over 1.5 million people
12 worldwide to improve their respiratory health and performance, including those who want to
13 decrease the burden of chronic illness or achieve a higher level of performance without drugs.
14 PN Medical's flagship product is called "THE BREATHER." It is the first respiratory muscle
15 training device of its kind, designed to provide both inspiratory and expiratory training
16 independent of each side of the breath. THE BREATHER is endorsed by clinicians who
17 provide respiratory muscle training worldwide as an effective way to treat respiratory, cardiac,
18 and neuromuscular impairments. PN Medical's work is more valued than ever in the present
19 reality of COVID-19, as the company is utilizing its forty years (and counting) of expertise to
20 marshal new research, share education and protocols regarding the proper use of masks, and
21 offer solutions that help people breathe better while wearing masks. PN Medical's products are
22 sold internationally, as well as in major U.S. retailers such as Amazon.com.

23 4. PN Medical owns, manages, enforces, licenses, and maintains IP, including
24 various trademarks. Relevant to this Complaint, PN Medical owns the following registered
25 trademark ("THE BREATHER Trademark").

<u>Mark</u>	<u>Registration No. (International Classes)</u>
THE BREATHER	1,607,377 (IC 010)

A true and correct copy of the registration certificate for THE BREATHER Trademark is attached as **Exhibit A**.

5. From September 2021 to February 2022, Defendants advertised, marketed, offered, and sold counterfeit PN Medical products in the Amazon Store, using THE BREATHER Trademark, without authorization, to deceive customers about the authenticity and origin of the products and the products' affiliation with PN Medical.

6. As a result of their illegal actions, Defendants have infringed and misused PN Medical's IP, breached their contract with Amazon, willfully deceived and harmed Amazon, PN Medical, and their customers, compromised the integrity of Amazon's stores, and undermined the trust that customers place in Amazon and PN Medical. Defendants' illegal actions have caused Amazon and PN Medical to expend significant resources to investigate and combat Defendants' wrongdoing and to bring this lawsuit to prevent Defendants from inflicting future harm to Amazon, PN Medical, and their customers.

II. PARTIES

7. Amazon.com, Inc. is a Delaware corporation with its principal place of business in Seattle, Washington. Amazon.com Services, LLC is a Delaware company with its principal place of business in Seattle, Washington.

8. PN Medical, Inc. is a Florida corporation with its principal place of business in Cocoa Beach, Florida.

9. Defendants are a collection of individuals, both known and unknown, who conspired and operated in concert with each other to engage in the counterfeiting scheme alleged in this Complaint. Defendants are subject to liability for their wrongful conduct both

1 directly and under principles of secondary liability including, without limitation, respondeat
 2 superior, vicarious liability, and/or contributory infringement.

3 10. On information and belief, at least one Defendant is an individual or entity doing
 4 business as “Bamb Awns” (referred to herein as the “Bamb Awns Defendant” or “Bamb Awns
 5 Selling Account”). On further information and belief, the individual or entity behind the Bamb
 6 Awns Selling Account falsely represented its location as Port Saint Lucie, Florida, and has
 7 deliberately registered additional false information with Amazon as part of a scheme to mislead
 8 Plaintiffs. The true location of the Bamb Awns Selling Account is presently unknown. On
 9 further information and belief, the Bamb Awns Defendant personally participated in and/or had
 10 the right and ability to supervise, direct, and control the wrongful conduct alleged in this
 11 Complaint, and derived a direct financial benefit as a result of that wrongful conduct.

12 11. On information and belief, at least one Defendant is an individual or entity doing
 13 business as “Erdez LLC” (referred to herein as the “Erdez Defendant” or “Erdez Selling
 14 Account”). On further information and belief, the individual or entity behind the Erdez Selling
 15 Account falsely represented its location as Hallandale Beach, Florida, and has deliberately
 16 registered additional false information with Amazon as part of a scheme to mislead Plaintiffs.
 17 The true location of the Erdez Selling Account is presently unknown. On further information
 18 and belief, the Erdez Defendant personally participated in and/or had the right and ability to
 19 supervise, direct, and control the wrongful conduct alleged in this Complaint, and derived a
 20 direct financial benefit as a result of that wrongful conduct.

21 12. On information and belief, at least one Defendant is an individual or entity doing
 22 business as “Louetta Cifaldi LLC” (referred to herein as the “Louetta Cifaldi Defendant” or
 23 “Louetta Cifaldi Selling Account”). On further information and belief, the individual or entity
 24 behind the Louetta Cifaldi Selling Account falsely represented its location as Myrtle Beach,
 25 South Carolina, and has deliberately registered additional false information with Amazon as
 26 part of a scheme to mislead Plaintiffs. The true location of the Louetta Cifaldi Selling Account
 27 is presently unknown. On further information and belief, the Louetta Cifaldi Defendant

1 personally participated in and/or had the right and ability to supervise, direct, and control the
 2 wrongful conduct alleged in this Complaint, and derived a direct financial benefit as a result of
 3 that wrongful conduct.

4 13. On information and belief, at least one Defendant is an individual or entity doing
 5 business as “Otary Servi” (referred to herein as the “Otary Servi Defendant” or “Otary Servi
 6 Selling Account”). On further information and belief, the individual or entity behind the Otary
 7 Servi Selling Account falsely represented its location as Valrico, Florida, and has deliberately
 8 registered additional false information with Amazon as part of a scheme to mislead Plaintiffs.
 9 The true location of the Otary Servi Selling Account is presently unknown. On further
 10 information and belief, the Otary Servi Defendant personally participated in and/or had the
 11 right and ability to supervise, direct, and control the wrongful conduct alleged in this
 12 Complaint, and derived a direct financial benefit as a result of that wrongful conduct.

13 14. On information and belief, at least one Defendant is an individual or entity doing
 14 business as “Philp Allar” (referred to herein as the “Philp Allar Defendant” or “Philp Allar
 15 Selling Account”). On further information and belief, the individual or entity behind the Philp
 16 Allar Selling Account falsely represented its location as Merritt Island, Florida, and has
 17 deliberately registered additional false information with Amazon as part of a scheme to mislead
 18 Plaintiffs. The true location of the Philp Allar Selling Account is presently unknown. On
 19 further information and belief, the Philp Allar Defendant personally participated in and/or had
 20 the right and ability to supervise, direct, and control the wrongful conduct alleged in this
 21 Complaint, and derived a direct financial benefit as a result of that wrongful conduct.

22 15. On information and belief, at least one Defendant is an individual or entity doing
 23 business as “Roystal Inc.” (referred to herein as the “Roystal Defendant” or “Roystal Selling
 24 Account”). On further information and belief, the individual or entity behind the Roystal
 25 Selling Account falsely represented its location as Orlando, Florida, and has deliberately
 26 registered additional false information with Amazon as part of a scheme to mislead Plaintiffs.
 27 The true location of the Roystal Selling Account is presently unknown. On further information

1 and belief, the Roystal Defendant personally participated in and/or had the right and ability to
2 supervise, direct, and control the wrongful conduct alleged in this Complaint, and derived a
3 direct financial benefit as a result of that wrongful conduct.

4 16. On information and belief, at least one Defendant is an individual or entity doing
5 business as “Sixth6Home” (referred to herein as the “Sixth6Home Defendant” or “Sixth6Home
6 Selling Account”) that provided a business address in the Federal District of Brazil. On further
7 information and belief, the Sixth6Home Defendant personally participated in and/or had the
8 right and ability to supervise, direct, and control the wrongful conduct alleged in this
9 Complaint, and derived a direct financial benefit as a result of that wrongful conduct.

10 17. On information and belief, at least one Defendant is an individual or entity doing
11 business as “Trbo Stment” (referred to herein as the “Trbo Stment Defendant” or “Trbo Stment
12 Selling Account”). On further information and belief, the individual or entity behind the Trbo
13 Stment Selling Account falsely represented its location as West Melbourne, Florida, and has
14 deliberately registered additional false information with Amazon as part of a scheme to mislead
15 Plaintiffs. The true location of the Trbo Stment Selling Account is presently unknown. On
16 further information and belief, the Trbo Stment Defendant personally participated in and/or had
17 the right and ability to supervise, direct, and control the wrongful conduct alleged in this
18 Complaint, and derived a direct financial benefit as a result of that wrongful conduct.

19 18. On information and belief, Defendants Does 1-10 (the “Doe Defendants”) are
20 individuals and entities working in active concert with each other and the named Defendants to
21 knowingly and willfully manufacture, import, advertise, market, offer, and sell counterfeit PN
22 Medical products. The identities of Does 1-10 are presently unknown to Plaintiffs.

23 **III. JURISDICTION AND VENUE**

24 19. The Court has subject matter jurisdiction over PN Medical’s Lanham Act claims
25 for trademark infringement, and Amazon’s and PN Medical’s Lanham Act claim for false
26 designation and false advertising, pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and
27 1338(a). The Court has subject matter jurisdiction over Amazon’s and PN Medical’s claim for

1 violation of the Washington Consumer Protection Act and Amazon's breach of contract claim
2 pursuant to 28 U.S.C. § 1367.

3 20. The Court has personal jurisdiction over all Defendants because they transacted
4 business and committed tortious acts within and directed to the State of Washington, and
5 Amazon's and PN Medical's claims arise from those activities. Defendants affirmatively
6 undertook to do business with Amazon, a corporation with its principal place of business in
7 Washington, and sold through the Amazon Store products bearing counterfeit versions of THE
8 BREATHER Trademark and which otherwise infringed PN Medical's IP. Each of the
9 Defendants committed, or facilitated the commission of, tortious acts in Washington and has
10 wrongfully caused Amazon and PN Medical substantial injury in Washington.

11 21. Further, the named Defendants have consented to the jurisdiction of this Court
12 by agreeing to the Amazon Services Business Solutions Agreement ("BSA"), which provides
13 that the "Governing Courts" for claims to enjoin infringement or misuse of IP rights and claims
14 related to the sale of counterfeit products in the Amazon Store are the state or federal courts
15 located in King County, Washington.

16 22. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(b) because a
17 substantial part of the events giving rise to the claims occurred in the Western District of
18 Washington.

19 23. Venue is proper in this Court also with respect to Defendants by virtue of the
20 allegations stated in paragraph 20 above, which are incorporated herein.

21 24. Pursuant to Local Civil Rule 3(e), intra-district assignment to the Seattle
22 Division is proper because the claims arose in this Division, where (a) Amazon resides, (b)
23 injuries giving rise to suit occurred, and (c) Defendants directed their unlawful conduct.

24 **IV. FACTS**

25 **A. Amazon's Efforts to Prevent the Sale of Counterfeit Goods**

26 25. Amazon works hard to build and protect the reputation of its stores as a place
27 where customers can conveniently select from a wide array of authentic goods and services at

1 competitive prices. Amazon invests vast resources to ensure that when customers make
 2 purchases through Amazon's stores—either directly from Amazon or from one of its millions
 3 of third-party sellers—customers receive authentic products made by the true manufacturer of
 4 those products.

5 26. A small number of bad actors seek to take advantage of the trust customers place
 6 in Amazon by attempting to create Amazon Selling Accounts to advertise, market, offer, and
 7 sell counterfeit products. These bad actors seek to misuse and infringe the trademarks and
 8 other IP of the true manufacturers of those products to deceive Amazon and its customers. This
 9 unlawful and expressly prohibited conduct undermines the trust that customers, sellers, and
 10 manufacturers place in Amazon, and tarnishes Amazon's brand and reputation, thereby causing
 11 irreparable harm to Amazon.

12 27. Amazon prohibits the sale of inauthentic and fraudulent products and is
 13 constantly innovating on behalf of customers and working with brands, manufacturers, rights
 14 owners, and others to improve the detection and prevention of counterfeit products ever being
 15 offered to customers through Amazon's stores. Amazon employs dedicated teams of software
 16 engineers, research scientists, program managers, and investigators to prevent counterfeits from
 17 being offered in Amazon's stores. Amazon's systems automatically and continuously scan
 18 thousands of data points to detect and remove counterfeits from its stores and to terminate the
 19 Selling Accounts of bad actors before they can offer counterfeit products. When Amazon
 20 identifies issues based on this feedback, it takes action to address them. Amazon also uses this
 21 intelligence to improve its proactive prevention controls.

22 28. In 2017, Amazon launched the Amazon Brand Registry, a free service to any
 23 rights owner with a government-registered trademark, regardless of the brand's relationship
 24 with Amazon. Brand Registry delivers automated brand protections that use machine learning
 25 to predict infringement and proactively protect brands' IP. Brand Registry also provides a
 26 powerful Report a Violation Tool that allows brands to search for and accurately report
 27 potentially infringing products using state-of-the-art image search technology. More than

1 500,000 brands, including PN Medical, are enrolled in Brand Registry, and those brands are
2 finding and reporting 99% fewer suspected infringements since joining Brand Registry.

3 29. In 2018, Amazon launched Transparency, a product serialization service that
4 effectively eliminates counterfeits for enrolled products. Brands enrolled in Transparency can
5 apply a unique 2D code to every unit they manufacture, which allows Amazon, other retailers,
6 law enforcement, and customers to determine the authenticity of any Transparency-enabled
7 product, regardless of where the product was purchased. In 2020, over 15,000 brands were
8 using Transparency enabling the protection of more than 500 million product units.

9 30. In 2019, Amazon launched Project Zero, a program to empower brands to help
10 Amazon drive counterfeits to zero. Amazon's Project Zero introduced a novel self-service
11 counterfeit removal tool that enables brands to remove counterfeit listings directly from
12 Amazon's stores. This enables brands to take down counterfeit product offerings on their own
13 within minutes. In 2020, there were more than 18,000 brands enrolled in Project Zero. For
14 every listing removed by a brand, Amazon's automated protections removed more than 600
15 listings through scaled technology and machine learning, stopping those listings from appearing
16 in Amazon's stores.

17 31. Amazon also uses industry-leading technology to analyze hundreds of unique
18 data points and robust processes to verify information provided by potential sellers, and its
19 ongoing efforts have been successful. In 2020, only 6% of attempted new seller account
20 registrations passed Amazon's robust seller verification processes and listed products for sale.
21 Amazon prevented over six million attempts to create new selling accounts, stopping bad actors
22 before they published a single product for sale. Amazon is also constantly innovating on these
23 tools and systems. For example, Amazon is implementing one-on-one interviews with
24 prospective sellers through video chat or in person at an Amazon office to verify sellers'
25 identities and government-issued documentation. Moreover, Amazon is verifying new and
26 existing sellers' addresses by sending information, including a unique code, to the sellers'
27 addresses. These measures have made it more difficult for bad actors to hide.

1 32. Once a seller begins selling in Amazon's stores, Amazon continues to monitor
 2 the selling account's activities for risks. If Amazon identifies a bad actor, it closes that actor's
 3 selling account, withholds funds disbursement, and investigates whether other accounts are
 4 involved in unlawful activities.

5 33. In addition to the measures discussed above, Amazon actively cooperates with
 6 rights owners and law enforcement to identify and prosecute bad actors suspected of engaging
 7 in illegal activity. Lawsuits, like this one, are integral components of Amazon's efforts to
 8 combat counterfeits.

9 **B. PN Medical and Its Anti-Counterfeiting Efforts**

10 34. PN Medical goes to great lengths to protect consumers from counterfeits of its
 11 products. It utilizes both internal and external resources to combat counterfeits, piracy, and
 12 distribution abuse. This includes trained internal staff who consistently monitor online retail
 13 sites around the world for IP infringements and counterfeit sellers. PN Medical also works
 14 with a third-party brand protection service vendor on the detection and removal of product
 15 listings that violate PN Medical's IP rights.

16 35. PN Medical is currently enrolled in Amazon Brand Registry.

17 **C. Defendants Created Amazon Selling Accounts and Agreed Not to Sell
 18 Counterfeit Goods**

19 36. Defendants controlled and operated the eight Amazon Selling Accounts
 20 (collectively, the "Selling Accounts") detailed in section D below through which they sought to
 21 advertise, market, sell, and distribute counterfeit PN Medical products. In connection with
 22 these Selling Accounts, Defendants provided names, email addresses, and banking information
 23 for each account.

24 37. To become a third-party seller in the Amazon Store, sellers are required to agree
 25 to the BSA, which governs the applicant's access to and use of Amazon's services and states
 26 Amazon's rules for selling in the Amazon Store. By entering into the BSA, each seller
 27 represents and warrants that it "will comply with all applicable Laws in [the] performance of its

1 obligations and exercise of its rights” under the BSA. A true and correct copy of the applicable
2 version of the BSA, namely, the version when Defendants last used Amazon’s Services, is
3 attached as **Exhibit B**.

4 38. Under the terms of the BSA, Amazon specifically identifies the sale of
5 counterfeit goods as “deceptive, fraudulent, or illegal activity” in violation of Amazon’s
6 policies, reserving the right to withhold payments and terminate the account of any seller who
7 engages in such conduct. Ex. B, ¶¶ 2-3. The BSA requires the seller to defend, indemnify, and
8 hold harmless Amazon against any claims or losses arising from the seller’s “actual or alleged
9 infringement of any Intellectual Property Rights.” *Id.* ¶ 6.1.

10 39. Additionally, the BSA incorporates, and sellers therefore agree to be bound by,
11 Amazon’s Anti-Counterfeiting Policy, the applicable version of which is attached as **Exhibit C**.
12 The Anti-Counterfeiting Policy expressly prohibits the sale of counterfeit goods in the Amazon
13 Store:

- 14 • The sale of counterfeit products is strictly prohibited.
- 15 • You may not sell any products that are not legal for sale, such
16 as products that have been illegally replicated, reproduced, or
 manufactured[.]
- 17 • You must provide records about the authenticity of your
18 products if Amazon requests that documentation[.]

19 Failure to abide by this policy may result in loss of selling
20 privileges, funds being withheld, destruction of inventory in our
21 fulfilment centers, and other legal consequences.

22 *Id.*

23 40. Amazon’s Anti-Counterfeiting Policy further describes Amazon’s commitment
24 to preventing the sale and distribution of counterfeit goods in the Amazon Store together with
25 the consequences of doing so:

- 26 • Sell Only Authentic and Legal Products. It is your
27 responsibility to source, sell, and fulfill only authentic
 products that are legal for sale. Examples of prohibited
 products include:
 - Bootlegs, fakes, or pirated copies of products or content

- 1 ○ Products that have been illegally replicated, reproduced,
2 or manufactured
- 3 ○ Products that infringe another party's intellectual property
4 rights
- 5 ● Maintain and Provide Inventory Records. Amazon may
6 request that you provide documentation (such as invoices)
7 showing the authenticity of your products or your
8 authorization to list them for sale. You may remove pricing
9 information from these documents, but providing documents
10 that have been edited in any other way or that are misleading
11 is a violation of this policy and will lead to enforcement
12 against your account.
- 13 ● Consequences of Selling Inauthentic Products. If you sell
14 inauthentic products, we may immediately suspend or
15 terminate your Amazon selling account (and any related
16 accounts), destroy any inauthentic products in our fulfillment
17 centers at your expense, and/or withhold payments to you.
- 18 ● Amazon Takes Action to Protect Customers and Rights
19 Owners. Amazon also works with manufacturers, rights
20 holders, content owners, vendors, and sellers to improve the
21 ways we detect and prevent inauthentic products from
22 reaching our customers. As a result of our detection and
23 enforcement activities, Amazon may:
 - 24 ○ Remove suspect listings.
 - 25 ○ Take legal action against parties who knowingly violate
26 this policy and harm our customers. In addition to
27 criminal fines and imprisonment, sellers and suppliers of
28 inauthentic products may face civil penalties including the
29 loss of any amounts received from the sale of inauthentic
30 products, the damage or harm sustained by the rights
31 holders, statutory and other damages, and attorney's fees.
- 32 ● Reporting Inauthentic Products. We stand behind the
33 products sold on our site with our A-to-z Guarantee, and we
34 encourage rights owners who have product authenticity
35 concerns to notify us. We will promptly investigate and take
36 all appropriate actions to protect customers, sellers, and rights
37 holders. You may view counterfeit complaints on the
38 Account Health page in Seller Central.

23 *Id.*

24 41. When they registered as third-party sellers in the Amazon Store, and established
25 their Selling Accounts, Defendants agreed not to advertise, market, offer, sell, or distribute
26 counterfeit products.

1 **D. Test Purchases from Defendants' Selling Accounts**

2 42. Defendants advertised, marketed, offered, and sold THE BREATHER-branded
 3 products in the Amazon Store. PN Medical conducted multiple test purchases from the
 4 Defendants' Selling Accounts and determined that the products are counterfeit and each bears a
 5 counterfeit PN Medical registered trademark.

6 **Selling Account #1 – Bamb Awns**

7 43. At all times described herein, the Bamb Awns Selling Account was controlled
 8 and operated by the Bamb Awns Defendant and, on information and belief, other parties,
 9 known and unknown.

10 44. On December 4, 2021, PN Medical conducted a test purchase from the Bamb
 11 Awns Selling Account for what was advertised as a PN Medical branded "THE BREATHER"
 12 product. Defendants shipped to PN Medical a product that bore THE BREATHER Trademark
 13 and other indications of its brand. PN Medical has examined the product and determined it is
 14 counterfeit. Although the product contained reproductions of THE BREATHER Trademark,
 15 the product differed from the authentic THE BREATHER product. Among other things, the
 16 product purchased from the Bamb Awns Selling Account (1) arrived in substandard packaging;
 17 (2) used smaller gauge stock paper with lower quality ink for the inserts; (3) was colored using
 18 a different pigment; (4) contained visible particulate matter; and (5) was of inferior quality.

19 **Selling Account #2 – Erdez**

20 45. At all times described herein, the Erdez Selling Account was controlled and
 21 operated by the Erdez Defendant and, on information and belief, other parties, known and
 22 unknown.

23 46. On December 31, 2021, PN Medical conducted a test purchase from the Erdez
 24 Selling Account for what was advertised as a PN Medical branded "THE BREATHER"
 25 product. Defendants shipped to PN Medical a product that bore THE BREATHER Trademark
 26 and other indications of its brand. PN Medical has examined the product and determined it is
 27 counterfeit. Although the product contained reproductions of THE BREATHER Trademark,

1 the product differed from the authentic THE BREATHER product. Among other things, the
 2 product purchased from the Erdez Selling Account (1) arrived in substandard packaging; (2)
 3 used smaller gauge stock paper with lower quality ink for the inserts; (3) was colored using a
 4 different pigment; (4) contained visible particulate matter; and (5) was of inferior quality.

5 **Selling Account #3 – Louetta Cifaldi**

6 47. At all times described herein, the Louetta Cifaldi Selling Account was controlled
 7 and operated by the Louetta Cifaldi Defendant and, on information and belief, other parties,
 8 known and unknown.

9 48. On November 24, 2021 and then on January 22, 2022, PN Medical conducted
 10 separate test purchases from the Louetta Cifaldi Seller Account for what was advertised as PN
 11 Medical branded “THE BREATHER” products. Defendants shipped to PN Medical products
 12 that bore THE BREATHER Trademark and other indications of its brand. PN Medical has
 13 examined the products and determined they are counterfeit. Although the products contained
 14 reproductions of THE BREATHER Trademark, the products differed from the authentic THE
 15 BREATHER product. Among other things, the products purchased from the Louetta Cifaldi
 16 Selling Account (1) arrived in substandard packaging; (2) used smaller gauge stock paper with
 17 lower quality ink for the inserts; (3) were colored using a different pigment; (4) contained
 18 visible particulate matter; and (5) were of inferior quality.

19 **Selling Account #4 – Otary Servi**

20 49. At all times described herein, the Otary Servi Selling Account was controlled
 21 and operated by the Otary Servi Defendant and, on information and belief, other parties, known
 22 and unknown.

23 50. On November 28, 2021, PN Medical conducted a test purchase from Otary Servi
 24 Selling Account for what was advertised as a PN Medical branded “THE BREATHER”
 25 product. Defendants shipped to PN Medical a product that bore THE BREATHER Trademark
 26 and other indications of its brand. PN Medical has examined the product and determined it is
 27 counterfeit. Although the product contained reproductions of THE BREATHER Trademark,

1 the product differed from the authentic THE BREATHER product. Among other things, the
 2 product purchased from the Otary Servi Selling Account (1) arrived in substandard packaging;
 3 (2) used smaller gauge stock paper with lower quality ink for the inserts; (3) was colored using
 4 a different pigment; (4) contained visible particulate matter; and (5) was of inferior quality.

5 **Selling Account #5 – Philp Allar**

6 51. At all times described herein, the Philp Allar Selling Account was controlled
 7 and operated by the Philp Allar Defendant and, on information and belief, other parties, known
 8 and unknown.

9 52. On October 26, 2021, PN Medical conducted one test purchase from the Philp
 10 Allar Selling Account for what was advertised as PN Medical branded “THE BREATHER”
 11 products. Defendants shipped to PN Medical a product that bore THE BREATHER Trademark
 12 and other indications of its brand. PN Medical has examined the product and determined it is
 13 counterfeit. Although the product contained reproductions of THE BREATHER Trademark,
 14 the product differed from the authentic THE BREATHER product. Among other things, the
 15 product purchased from the Philp Allar Selling Account (1) arrived in substandard packaging;
 16 (2) used smaller gauge stock paper with lower quality ink for the inserts; (3) was colored using
 17 a different pigment; (4) contained visible particulate matter; and (5) was of inferior quality.

18 **Selling Account #6 – Roystal**

19 53. At all times described herein, the Roystal Selling Account was controlled and
 20 operated by the Roystal Defendant and, on information and belief, other parties, known and
 21 unknown.

22 54. On December 26, 2021, PN Medical conducted a test purchase from the Roystal
 23 Selling Account for what was advertised as a PN Medical branded “THE BREATHER”
 24 product. Defendants shipped to PN Medical a product that bore THE BREATHER Trademark
 25 and other indications of its brand. PN Medical has examined the product and determined it is
 26 counterfeit. Although the product contained reproductions of THE BREATHER Trademark,
 27 the product differed from the authentic THE BREATHER product. Among other things, the

1 product purchased from the Roystal Selling Account (1) arrived in substandard packaging; (2)
2 used smaller gauge stock paper with lower quality ink for the inserts; (3) was colored using a
3 different pigment; (4) contained visible particulate matter; and (5) was of inferior quality.

4 **Selling Account #7 – Sixth6Home**

5 55. At all times described herein, the Sixth6Home Selling Account was controlled
6 and operated by the Sixth6Home Defendant and, on information and belief, other parties,
7 known and unknown.

8 56. On September 28, 2021 and then on November 2, 2021, PN Medical conducted
9 separate test purchases from the Sixth6Home Selling Account for what was advertised as PN
10 Medical branded “THE BREATHER” products. Defendants shipped to PN Medical products
11 that bore THE BREATHER Trademark and other indications of its brand. PN Medical has
12 examined the products and determined they are counterfeit. Although the products contained
13 reproductions of THE BREATHER Trademark, the products differed from the authentic THE
14 BREATHER product. Among other things, the products purchased from the Sixth6Home
15 Selling Account (1) arrived in substandard packaging; (2) used smaller gauge stock paper with
16 lower quality ink for the inserts; (3) was colored using a different pigment; (4) contained
17 visible particulate matter; and (5) was of inferior quality.

18 **Selling Account #8 – Trbo Stment**

19 57. At all times described herein, the Trbo Stment Selling Account was controlled
20 and operated by the Trbo Stment Defendant and, on information and belief, other parties,
21 known and unknown.

22 58. On November 6, 2021, PN Medical conducted two test purchases from the Trbo
23 Stment Selling Account for what was advertised as PN Medical branded “THE BREATHER”
24 products. Defendants shipped to PN Medical products that bore THE BREATHER Trademark
25 and other indications of its brand. PN Medical has examined the products and determined they
26 are counterfeit. Although the products contained reproductions of THE BREATHER
27 Trademark, the products differed from the authentic THE BREATHER product. Among other

1 things, the products purchased from the Trbo Stment Selling Account (1) arrived in substandard
2 packaging; (2) used smaller gauge stock paper with lower quality ink for the inserts; (3) were
3 colored using a different pigment; (4) contained visible particulate matter; and (5) were of
4 inferior quality.

5 **E. Defendants' Coordinated Sale of Counterfeit PN Medical Products**

6 59. On information and belief, Defendants operated in concert with one another in
7 their counterfeiting activities. The eight Selling Accounts have various common characteristics
8 that make it probable that the accounts are being operated by one or more of the Defendants
9 acting in concert. These common characteristics include, among other things, the sale of
10 identical counterfeit products, use of the same Internet Protocol address to log into the Selling
11 Accounts, and use of the same two banks for funds disbursement. These counterfeit products
12 are of inferior quality and, as a result, tarnish PN Medical's brand and undermine customer
13 goodwill.

14 **F. Amazon and PN Medical Shut Down Defendants' Accounts**

15 60. By selling counterfeit PN Medical products, Defendants falsely represented to
16 Amazon and its customers that the products Defendants sold were genuine products made by
17 PN Medical. Defendants also knowingly and willfully used PN Medical's IP in connection
18 with the advertisement, marketing, distribution, offering for sale, and sale of counterfeit PN
19 Medical products.

20 61. At all times, Defendants knew they were prohibited from violating third-party IP
21 rights or any applicable laws while selling products in the Amazon Store. Defendants have
22 breached those terms of their agreement with Amazon, deceived Amazon's customers and
23 Amazon, infringed and misused the IP rights of PN Medical, harmed the integrity of and
24 customer trust in the Amazon Store, and tarnished Amazon's and PN Medical brands.

25 62. Amazon, after receiving notice from PN Medical, verified Defendants' unlawful
26 sale of counterfeit PN Medical products and blocked Defendants' Selling Accounts. In doing
27

so, Amazon exercised its rights under the BSA to protect customers and the reputations of
Amazon and PN Medical.

3 63. Pursuant to Amazon's A-to-z guarantee, Amazon also proactively issued full
4 refunds to customers who purchased purported PN Medical products from Defendants.
5 Defendants have not reimbursed Amazon.

V. CLAIMS

FIRST CLAIM

(by PN Medical against all Defendants)
Trademark Infringement – 15 U.S.C. § 1114

9 64. Plaintiff PN Medical incorporates by reference the allegations of the preceding
10 paragraphs as though set forth herein.

11 65. Defendants' activities constitute infringement of THE BREATHER Trademark
12 as described in the paragraphs above.

13 66. PN Medical advertises, markets, offers, and sells its products using THE
14 BREATHER Trademark described above and uses that trademark to distinguish its products
15 from the products and related items of others in the same or related fields.

16 67. Because of PN Medical's long, continuous, and exclusive use of THE
17 BREATHER Trademark identified in this Complaint, the trademark has come to mean, and is
18 understood by customers and the public to signify, products from PN Medical.

19 68. Defendants unlawfully advertised, marketed, offered, and sold products bearing
20 counterfeit versions of THE BREATHER Trademark with the intent and likelihood of causing
21 customer confusion, mistake, and deception as to the products' source, origin, and authenticity.
22 Specifically, Defendants intended customers to believe, incorrectly, that the products originated
23 from, were affiliated with, and/or were authorized by PN Medical and likely caused such
24 erroneous customer beliefs.

25 69. As a result of Defendants' wrongful conduct, PN Medical is entitled to recover
26 its actual damages. Defendants' profits attributable to the infringement, and treble damages and

attorney fees pursuant to 15 U.S.C. § 1117(a) and (b). Alternatively, PN Medical is entitled to statutory damages under 15 U.S.C. § 1117(c).

70. PN Medical is further entitled to injunctive relief, including an order impounding all infringing products and promotional materials in Defendants' possession. PN Medical has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) THE BREATHER Trademark is unique and valuable property that has no readily determinable market value; (b) Defendants' infringement constitutes harm to PN Medical and PN Medical's reputation and goodwill such that PN Medical could not be made whole by any monetary award; (c) if Defendants' wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin, or authenticity of the infringing materials; and (d) Defendants' wrongful conduct, and the resulting harm to PN Medical, is likely to be continuing.

SECOND CLAIM
(by PN Medical against all Defendants)

71. Plaintiff PN Medical incorporates by reference the allegations of the preceding paragraphs as though set forth herein.

72. PN Medical owns THE BREATHER Trademark and advertises, markets, offers, and sells its products using the trademark described above and uses the trademark to distinguish its products from the products and related items of others in the same or related fields.

73. Because of PN Medical's long, continuous, and exclusive use of THE BREATHER Trademark, it has come to mean, and is understood by customers, end users, and the public, to signify products from PN Medical.

74. Defendants' wrongful conduct includes the infringement of THE BREATHER Trademark in connection with Defendants' commercial advertising or promotion, and the offering for sale and sale of counterfeit PN Medical products in interstate commerce.

75. In advertising, marketing, offering, and selling products bearing counterfeit versions of THE BREATHER Trademark. Defendants have used, and on information and

belief, continue to use, the trademark referenced above to compete unfairly with PN Medical and to deceive customers. Upon information and belief, Defendants' wrongful conduct misleads and confuses customers and the public as to the origin and authenticity of the goods and services advertised, marketed, offered, or sold in connection with THE BREATHER Trademark and wrongfully trades upon PN Medical's goodwill and business reputation.

76. Defendants' conduct constitutes (a) false designation of origin, (b) false or misleading description, and (c) false or misleading representation that products originate from or are authorized by PN Medical, all in violation of 15 U.S.C. § 1125(a)(1)(A).

77. Defendants' conduct also constitutes willful false statements in connection with goods and/or services distributed in interstate commerce in violation of 15 U.S.C. § 1125(a)(1)(B).

78. PN Medical is entitled to an injunction against Defendants, their officers, agents, representatives, servants, employees, successors, and assigns, and all other persons in active concert or participation with them, as set forth in the Prayer for Relief below. Defendants' acts have caused irreparable injury to PN Medical. The injury to PN Medical is irreparable, and on information and belief, is continuing. An award of monetary damages cannot fully compensate PN Medical for its injuries, and PN Medical lacks an adequate remedy at law.

79. PN Medical is further entitled to recover Defendants' profits, PN Medical's damages for its losses, and PN Medical's costs to investigate and remediate Defendants' conduct and bring this action, including its attorney's fees, in an amount to be determined. PN Medical is also entitled to the trebling of any damages award as allowed by law.

THIRD CLAIM

(by Amazon against all Defendants)

False Designation of Origin and False Advertising – 15 U.S.C. § 1125(a)

80. Plaintiff Amazon incorporates by reference the allegations of the preceding paragraphs as though set forth herein.

1 81. Amazon's reputation for trustworthiness is at the heart of its relationship with
 2 customers. Defendants' actions in selling counterfeits pose a threat to Amazon's reputation
 3 because they undermine and jeopardize customer trust in the Amazon Store.

4 82. Specifically, Defendants deceived Amazon and its customers about the
 5 authenticity of the products they were advertising, marketing, offering, and selling, in direct
 6 and willful violation of the BSA and Amazon's Anti-Counterfeiting Policies. Defendants'
 7 deceptive acts were material to Amazon's decision to allow Defendants to sell their products in
 8 the Amazon Store because Amazon would not have allowed Defendants to do so but for their
 9 deceptive acts.

10 83. In advertising, marketing, offering, and selling counterfeit PN Medical products
 11 in the Amazon Store, Defendants made false and misleading statements of fact about the origin,
 12 sponsorship, or approval of those products in violation of 15 U.S.C. § 1125(a)(1)(A).

13 84. Defendants' acts also constitute willful false statements in connection with
 14 goods and/or services distributed in interstate commerce in violation of 15 U.S.C.
 15 § 1125(a)(1)(B).

16 85. As described above, Defendants, through their illegal acts, have willfully
 17 deceived Amazon and its customers, jeopardized the trust that customers place in the Amazon
 18 Store, tarnished Amazon's brand and reputation, and harmed Amazon and its customers.
 19 Defendants' misconduct has also caused Amazon to expend significant resources to investigate
 20 and combat Defendants' wrongdoing and to bring this lawsuit to prevent Defendants from
 21 causing further harm to Amazon and its customers. Defendants' illegal acts have caused
 22 irreparable injury to Amazon and, on information and belief, that injury is ongoing at least to
 23 the extent that Defendants continue to establish seller accounts under different or false
 24 identities. An award of monetary damages alone cannot fully compensate Amazon for its
 25 injuries, and thus Amazon lacks an adequate remedy at law.

86. Amazon is entitled to an injunction against Defendants, their officers, agents, representatives, servants, employees, successors and assigns, and all other persons in active concert or participation with them, as set forth in the Prayer for Relief below.

87. Amazon is further entitled to recover Amazon's damages for its losses and Amazon's costs to investigate and remediate Defendants' conduct and bring this action, including its attorney's fees, in an amount to be determined.

FOURTH CLAIM

(by PN Medical and Amazon against all Defendants)
Violation of Washington Consumer Protection Act, RCW 19.86.010, et seq.

9 88. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as
10 though set forth herein.

89. Defendants' advertising, marketing, offering, and selling of counterfeit PN Medical products constitute an unfair method of competition and unfair and deceptive acts or practices in the conduct of trade or commerce, in violation of RCW 19.86.020.

90. Defendants' advertising, marketing, offering, and selling of counterfeit PN Medical products harm the public interest by deceiving customers about the authenticity, origins, and sponsorship of the products

91. Defendants' advertising, marketing, offering, and selling of counterfeit PN Medical products directly and proximately cause harm to and tarnishes Plaintiffs' reputations and brands, and damage their business and property interests and rights

92. Accordingly, Plaintiffs seek to enjoin further violations of RCW 19.86.020 and recover their attorneys' fees and costs. Plaintiffs further seek to recover their actual damages, trebled

FIFTH CLAIM

PLAINTIFF
(by Amazon against all Defendants)
Breach of Contract

93. Plaintiff Amazon incorporates by reference the allegations of the preceding paragraphs as though set forth herein.

94. Defendants established Amazon Selling Accounts and entered into Amazon's

1 BSA, a binding and enforceable contract between Defendants and Amazon. Defendants also
2 contractually agreed to be bound by the Anti-Counterfeiting Policy and other policies as
3 maintained on the Amazon seller website.

4 95. Amazon performed all obligations required of it under the terms of the contract
5 with Defendants or was excused from doing so.

6 96. Defendants' sale and distribution of counterfeit PN Medical products materially
7 breached the BSA and the Anti-Counterfeiting Policy in numerous ways. Among other things,
8 Defendants' conduct constitutes infringement and misuse of the IP rights of PN Medical.

9 97. Defendants' breaches have caused significant harm to Amazon, and Amazon is
10 entitled to damages in an amount to be determined at trial.

11 **VI. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs respectfully pray for the following relief:

13 A. That the Court issue an order permanently enjoining Defendants, their officers,
14 agents, representatives, servants, employees, successors, and assigns, and all others in active
15 concert or participation with them, from:

- 16 (i) selling products in Amazon's stores;
- 17 (ii) selling products to Amazon or any affiliate;
- 18 (iii) opening or attempting to open any Amazon selling accounts;
- 19 (iv) manufacturing, distributing, offering to sell, or selling any product using
20 PN Medical's brand or trademarks, or which otherwise infringes PN
21 Medical's intellectual property, on any platform or in any medium;
- 22 (v) assisting, aiding or abetting any other person or business entity in
23 engaging or performing any of the activities referred to in subparagraphs
24 (i) through (iv) above;

25 B. That the Court enter judgment in Plaintiffs' favor on all claims brought by them;

1 C. That the Court enter an order pursuant to 15 U.S.C. § 1116 impounding all
2 counterfeit and infringing products bearing THE BREATHER Trademark or that otherwise
3 infringe PN Medical's IP, and any related materials, including business records, in Defendants'
4 possession or under their control;

5 D. That the Court enter an order requiring Defendants to provide Plaintiffs a full
6 and complete accounting of all amounts due and owing to Plaintiffs as a result of Defendants'
7 unlawful activities;

8 E. That Defendants be required to pay all general, special, and actual damages
9 which Plaintiffs have sustained, or will sustain as a consequence of Defendants' breaches and
10 unlawful acts, together with PN Medical's statutory damages, and that PN Medical's damages
11 be enhanced, doubled, or trebled as provided for by 15 U.S.C. § 1117(b), RCW 19.86.020, or
12 otherwise allowed by law;

13 F. That Defendants be ordered to pay the maximum amount of prejudgment
14 interest authorized by law;

15 G. That Defendants be required to pay the costs of this action and Plaintiffs'
16 reasonable attorneys' fees incurred in prosecuting this action, as provided for by 15 U.S.C.
17 § 1117, RCW 19.86.020, or otherwise allowed by law;

18 H. That the Court enter an order requiring that identified financial institutions
19 restrain and transfer to Plaintiffs all amounts arising from Defendants' unlawful counterfeiting
20 activities as set forth in this lawsuit, up to a total amount necessary to satisfy monetary
21 judgment in this case; and

22 I. That the Court grant Plaintiffs such other, further, and additional relief as the
23 Court deems just and equitable.

1 DATED this 31st day of March, 2022.
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